trial is found unsuitable and his service is terminated by a notice.

He then went on to say

"In short, in the case of an appointment to a permanent post in a Government service on probation or on an officiating basis, the servant so appointed does not acquire any substantive right to the post and consequently cannot complain, any more than a private servant employed on probation or on an officiating basis can do, if his service is terminated at any time."

With regard to dismissal I can do no better than quote the case of *Shyamlal* v. *State of Uttar Pradesh and another* [1] in which Das J. says (at p. 374):

"Removal, like dismissal, no doubt brings about a termination of service but every termination of service does not amount to dismissal or removal....Our recent decision in *Satischandra Anand* v. *Union of India, supra*, fully supports the conclusion that article 311 does not apply to all cases of termination of service."

Another characteristic of dismissal or removal is that it is a punishment. This is imposed on an officer as a penalty. In *Laximinarayan Chironjilal Bhargava* v. *The Union of India* [5] the opinion of the court was:

"Penalty is necessarily by way of retribution or correction. Where an act is not intended to be either by way of retribution or correction, it cannot be regarded as a penalty at all. If the Departmental Promotion Committee declines to approve of the petitioner's promotion because of some shortcomings which it finds in his work and suggests his reversion to the substantive post, its action cannot be characterised either as by way of retribution or of correction.

In the present case, as he did not have the necessary qualification for the post of Assistant Passport Officer, namely the possession of a School Certificate, in my view, it cannot be said that he suffered a punishment by his removal on that ground.

Munusamy was in the public service for seven years prior to his appointment as probationary passport officer. He went back to the same public service when he was found underqualified for confirmation. There never was any hiatus in his employment in the public service. He continued in the service, where he still is to-day. Then where is the dismissal? In my view, a shifting from one department to another is an administrative decision to which article 135(2) does not apply.

Here there was neither dismissal nor reduction in rank. Therefore, in my opinion the question of '*audi alteram partem*' does not arise.

I have referred to some Indian Authorities in this judgment and as the learned trial Judge had remarked, although they have no binding force in our courts, they are entitled to consideration as they are relevant to the present case.

It seems to me that the learned trial Judge had dealt with the matter carefully and thoroughly in his judgment and with respect I agree with his reasoning and finding and I would therefore dismiss the appeal. I make no order as to costs.

As this is a case which concerns the Government and its employees it would be well to quote the observations made in the case of *Laximinarayan Chironjilal Bhargava* v. *The Union of India, supra:*

"In the interest, not only of the employees of Government but also in that of the administration itself, the authorities concerned should observe the law and the rules not merely in form but also in spirit. Where that has not been done, the error can be easily rectified by a reconsideration of the matter after hearing the employee who feels aggrieved by the action taken against him. Such a course instead of showing any weakness on the part of the authorities, will not only clear them of a charge of lack of sympathy for their subordinates but would go a long way towards promoting confidence in the mind of the subordinates in the sense of justice and fair play on the part of their superiors."

*Appeal dismissed.*

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## TAN TOH CHIN & ORS. v. SIJHADI PEER BAKSH & ORS.

**[F.C. (Barakbah C.J. (Malaya), Wee Chong Jin C.J. (Singapore) and Tan Ah Tah F.J.) March 16, 1964]**

*Damages — Fatal accident — Loss of support — Compensation — Civil Law Ordinance (Cap. 24), s. 12.*

*Road Traffic — Round-about — Right to use — Whether cyclist on round-about should give signal.*

The accident in question took place at the round-about at 7¾ milestone, Bukit Timah Road, Singapore. The deceased, a night watchman, aged 50, was on a bicycle proceeding south on Bukit Timah Road and while negotiating the round-about 4 to 5 feet from its outer-edge, a motor-van driven by the 1st respondent came from the north and knocked him down at the mouth of the New Bukit Timah Road as a result of which he died 4 days later. The widow and children sued the owners and driver of the van under section 12 of the Civil Law Ordinance for loss suffered by them.

The learned trial judge found that (i) the 1st respondent was travelling at a speed far in excess of 30 miles per hour, (ii) the cause of the accident was the failure of the 1st appellant to reduce the speed of the vehicle on entering the round-about, and (iii) the deceased was 20% to blame for the accident. The learned trial judge assessed compensation at $20,000 but awarded $16,000 as the deceased was 20% to blame. The appellant appealed against the whole of the decision of the learned trial judge and the respondents cross-appealed on the finding of contributory negligence.

**Held:** (1) as the deceased was right on the round-about, he was not in any way obliged to see that there was any traffic coming from behind so as to make it safe for him to proceed in the direction he was going;

(2) since the 1st appellant was driving at a great speed and since it was not the duty of the deceased to give any signal when he was taking the round-about, there was no contributory negligence on the deceased's part. The amount of compensation at $20,000 as assessed by the trial judge maintained.

FEDERAL COURT.

*J. D. Donnelly* for the appellants.

*N. A. Christopher* for the respondents.

In the court below the following judgment was delivered:

**Choor Singh J.:** This was an action for damages arising out of a collision between a cyclist and a motor-van which occurred at about 11.20 p.m. on the night of 5th December, 1959, at the round-about at the 7¾ milestone, Bukit Timah Road, and resulted in the death of the cyclist. His widow and four children sued the owners and driver of the motor-van for damages under section 12 of the Civil Law Ordinance (Chapter 24) for loss suffered by them. The plaintiffs attributed the accident to the negligent driving of the second defendant's motor-van by the first defendant, their servant. The defendants, on the other hand, contended that the deceased's own negligence caused or contributed to the accident.

The undisputed facts of the case were these. The deceased left his house at the 8¾ milestone, Bukit Timah Road, Singapore, on the night in question at about 11.15 p.m. and cycled along Bukit Timah Road towards the south. He was on his way to the store of William Jacks & Co., Ltd. which is situated at the 6¾ milestone, Bukit Timah Road. He was employed as a night watchman at this store and had to commence duty at 12 midnight. At about 11.20 p.m. the deceased reached the round-about at the 7¾ milestone and proceeded to cycle round it about 4 or 5 feet from its outer edge. While the deceased was passing by the mouth of the new Bukit Timah Road, which is to the east of the Bukit Timah Road, the motor-van driven by the first defendant came from the direction of Johore, that is the north, and knocked down the deceased. The new road has two carriageways, the eastern one being for vehicles proceeding to the south. The impact took place on the round-about at a spot in front of the right-half of the eastern carriageway, as one approaches it from the north. The brake-marks left on the road by the motor-van were 30 feet long and ended on the right or offside edge of the carriageway. After hitting the cyclist the motor-van struck a concrete post embedded at the commencement of the right or off-side edge of the carriageway, and this concrete post was uprooted and flung some 13 feet away. The motor-van overturned and lay on its side on the off-side grass verge some 18 feet away from the end of the brake-marks.

Chelliah, who was called by the plaintiffs, testified that he came out of the Nature Reserve Road, the entrance to which is at the north-eastern portion of the round-about, when he saw the motor-van enter the round-about, travelling very fast. He heard the sound of the collision, which took place at the south-eastern portion of the round-about, but did not actually see it. He did not proceed to the scene as he was afraid, and went home when he saw a policeman arrive. It was suggested by the defence that Chelliah's evidence should not be accepted as he did not contact the police. I rejected the suggestion as he impressed me as an honest witness, who was frank enough to admit that he did not see the collision and that he was very poor at estimating distances.

The first defendant's case, briefly, was that when he first saw the deceased, the deceased was cycling about 150 feet ahead of the motor-van and proceeding in the same direction. The deceased was then cycling about four or five feet from the outer edge of the round-about and about 30 feet to the south of the Nature Reserve Road. When the motor-van was about 14 or 15 feet behind the cyclist, he swerved suddenly to his right into the path of the motor-van. The first defendant was travelling at 30 miles per hour, and although he applied his brakes and swerved to the right, he was unable to avoid the accident. The deceased's bicycle had no lamp, and the deceased gave no indication of his turning to his right. The road was well-lighted at the scene of the accident.

From the evidence before the court it was clear that the first defendant's version of the accident was not true. It was not in dispute that the impact took place in front of the right half of the carriageway. The motor-van was travelling, according to the first defendant, at 30 miles per hour, that is, at 44 feet per second, and it would have taken the van about a third of a second to travel 15 feet. Had the deceased suddenly cut across the path of the motor-van when it was only 14 or 15 feet from the deceased, as alleged by the first defendant, the deceased would have been knocked down in front of the left half of the carriageway, which was not what happened in fact.

It was also clear from the evidence before the court that the first defendant was travelling at a speed far in excess of 30 miles per hour. I found that the deceased and his bicycle were flung 40 to 50 feet ahead of the motor-van by the force of the impact. I found also that the motor-van travelled 30 feet after the brakes had been applied and struck a concrete post with such force that it was uprooted and flung some 13 feet away. I found also that the motor-van overturned on its side some 18 feet away from the end of the brake-marks. In the light of this evidence and the evidence of Chelliah I was of the view that the motor-van was travelling far in excess of 30 miles per hour.

In my opinion, when the first defendant entered the round-about knowing that a cyclist was cycling close to the outer edge of the round-about, it was his duty to travel at such a speed

as would enable him to deal with any situation which might arise. For the cyclist had as much right to use the round-about as the first defendant. And the first defendant should have foreseen the possibility of the cyclist intending to proceed round the round-about until he reached the south-west portion where the mouth of Bukit Timah Road is situated. As has been shown above, the first defendant must have been more than 14 or 15 feet from the deceased when the deceased was proceeding round the round-about in front of the mouth of the carriageway. If on entering the round-about and observing the cyclist, the first defendant had reduced his speed to about 20 miles per hour, the deceased would have been able to pass by the mouth of the carriageway without being knocked down by the motor-van. In my opinion the cause of the accident was the failure of the first defendant to reduce the speed of the motor-van on entering the round-about.

I next considered defence counsel's submission as to the deceased's contributory negligence. On the facts of the case, it seemed to me that the deceased must have commenced to pass by the mouth of the carriageway when he considered it safe to do so. Unfortunately, the speed of the motor-van was such that it was in fact unsafe for him to pass by the mouth of the carriageway then. In my view there was some negligence on his part and I found that he had to bear 20% of the blame for the accident.

There was one other important submission by defence counsel, namely, that there was no evidence before the court that the deceased died as a result of injuries received in the accident. It is not understood why counsel for the plaintiffs did not call medical evidence in this case but nevertheless there was, in my view, sufficient evidence before the court to indicate that the deceased died as a result of injuries received in the accident. The Death Certificate showed the cause of death as "Intracranial Haemorrhage, Hypostatic Pneumonia". It is common knowledge that intracranial haemorrhage is haemorrhage inside the skull of the head and is normally due to some injury to the head. And hypostatic pneumonia is brought about in a patient who has lain unconscious for some considerable time. The widow of the deceased testified that in 1959 her husband was killed in a motor accident and this statement of hers was not challenged by the defence. She visited the scene of the accident and visited her husband in hospital. She registered his death and her name appears in the Death Certificate as the informant. The fact of death is certified by Dr. A. Aaron, the Government Pathologist. The deceased was knocked down in the accident at 11.20 p.m. on 5th December, 1959, and he died at the General Hospital at 4.30 p.m. on 9th December. His death was reported to the State Coroner, who is named in the Death Certificate. The Coroner held an inquest in which evidence was given by Corporal Abdul Hamid bin Yasin who investigated the accident. In July, 1960, there were criminal proceedings against the first defendant arising out of the accident. In the light of all this evidence, I had no doubt at all that the deceased died as a result of injuries received in the accident.

As to the damages, the only claim made was for loss of support. The deceased was stated to be 50 years old when he died. His widow, the first plaintiff, was then 46, and their four children were 15, 13, 10 and 8 years old respectively. The deceased was employed as a night watchman by William Jacks & Co., Ltd. on a salary of $110 per month. He also kept cows and sold milk. According to his widow, his monthly income from the milk-selling business was about $300 per month making a total of $410 per month. His widow stated that she spent between $1.00 and $2.00 per day on the deceased's meals, and that she had about $340 per month to be spent on herself and her four children. She claimed $340 per month for herself and her four children, for loss of support. In cross-examination she stated that she used to give the deceased $2.50 daily and on top of that she paid for his food at home. In my view, the widow's figures, both as to the income from the sale of milk and as to the amount she spent on the deceased were slightly exaggerated. In my view, the milk-selling business could not have produced more than $190 net which together with the salary of $110 from William Jacks & Co., Ltd. gave the deceased a total income of $300 per month. Out of this sum I do not think the widow could have spent more than $75, that is, a quarter of the total income, on the deceased's food and other requirements. I therefore assessed the net amount that was available to the widow for herself and the four children at $225 per month. Having regard to the age of the deceased, the age of the widow and the ages of the four children, and taking into consideration the usual factors that must be considered in the type of case, including the normal expectation of an active working life for a man of 50, the hazards and vicissitudes of life itself and of business, and the payment of compensation in a lump sum, I assessed the compensation under section 12 of the Civil Law Ordinance at $20,000. As I held that the deceased had to bear 20% of the blame for the accident, I gave judgment, with costs, for the plaintiffs for $16,000, and I apportioned this sum between them.

*On appeal to the Federal Court,*

**Barakbah C.J. (Malaya)** (delivering oral

judgment): This is an appeal against the judgment of the learned judge awarding damages to the plaintiffs in a running down case.

The facts of the case have been fully set out by him and I do not think I will go through them again. It is conceded by Mr. Donnelly that the car at the time of the accident was driving at more than 30 miles an hour. According to the plan, the road from Johore to Singapore was broken by a round-about and the accident happened, in my opinion, right in the middle of the road on the round-about.

According to Mr. Donnelly, the car, if it is going towards the round-about should be keeping to the right side nearer the round-about than on the other side. It therefore follows that the appellant's car should in this case be on the left side of the road if it is going towards Singapore, but in this case it was found right in the middle of the road where the accident happened. In my opinion as the deceased was right on the round-about, it is not necessary for him to give any signal. For a car going towards Singapore the appellant should be on a look-out for any other users taking the round-about.

It is all a question of fact and the learned trial judge has found on the facts that there was negligence on the part of the appellant and for myself I do not feel disposed to interfere with the decision of the learned trial judge.

With regard to the cross appeal I think since the appellant was driving at a great speed and since it was not the duty of the deceased to give any signal when he was taking the round-about, there was no contributory negligence on his part. I think the cross appeal should be allowed.

In the circumstances, the appeal by the appellant is dismissed, the amount assessed by the learned trial judge of $20,000 be maintained and the distribution should be in proportion to the amount awarded by the learned trial judge.

The appeal is dismissed, the cross appeal allowed, payment of the deposit of $500 to respondents.

**Wee Chong Jin C.J. (Singapore):** I agree that the appeal should be dismissed and the cross appeal allowed. It seems to me clear on the facts which are not really in dispute at this stage of the hearing that the deceased was in the round-about and not as contended by Mr. Donnelly travelling at some part of the highway leading from Johore to Singapore. That being the position the deceased was entitled to proceed round the round-about and was not in any way obliged, as the learned trial judge seem to indicate in finding he was 20 per cent. to blame, to see that there was any traffic coming from behind so as to make it safe for him to proceed in the direction he was going.

**Tan Ah Tah F.J.:** I agree that the appeal should be dismissed and the cross appeal allowed. I also agree with the orders proposed.

*Appeal dismissed.*

*Cross-appeal allowed.*

Solicitors: *Battenberg & Talma; N. A. Christopher.*

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## KEHAR SINGH v. KARUPPIAH

[O.C.J. (Gill J.) March 20, 1964]

[K.L. — Civil Suit No. 791 of 1962]

*Moneylenders — Claim for money lent and interest — Memorandum not stating terms of promissory note or collateral security — Plaintiff's copy of memorandum not authenticated — Whether memorandum and on demand promissory note can be read together — Moneylenders Ordinance, 1951, s. 16.*

*Evidence — Presumption — Evidence Ordinance, 1950, s. 114(g).*

The plaintiff a licensed moneylender agreed to lend to the defendant $11,500 on the security of an "On Demand" promissory note with interest at 12% per annum and on the provision of collateral security. The parties then went before a Justice of the Peace and signed the necessary memorandum and promissory note copies of which were delivered to the defendant. At about the same time the defendant deposited with the plaintiff certain title deeds as collateral security which are not the subject matter of these proceedings. The money was then paid by the plaintiff to the defendant who counted same in the presence of the Justice of the Peace. The plaintiff now sued for the recovery of the money lent and interest thereon. It was contended *inter alia* for the defendant that the amount claimed by the plaintiff was not recoverable because section 16 of the Moneylenders Ordinance had not been complied with as (i) the memorandum did not state the terms of the promissory note (no copy was attached) nor did it mention the collateral security by way of deposit of title deeds (ii) the certificate of authentication of the copy of the memorandum produced by the plaintiff was not signed by him as lender (the copy of the memorandum delivered to the defendant was not produced).

**Held:** (1) as it was satisfactorily proved that the form of promissory note was in existence when the memorandum was signed and as the memorandum and promissory note were signed almost simultaneously and a copy of the latter was supplied to the defendant as soon as same was signed the two documents can be read together to constitute a good memorandum under section 16 of the Ordinance;

(2) in the circumstances of this case an inference should be drawn in view of the presumption under section 114(g) of the Evidence Ordinance that the copy of the memorandum delivered to the defendant was authenticated by the plaintiff.

*Cases referred to:—*

(1) *Abirami Ammal & Anor.* v. *M.S.M.M. Meyappa Chettiar* [1959] M.L.J. 149 at p. 151.

(2) *Reading Trust Ltd.* v. *Spero* [1930] 1 K.B. 492.

(3) *F. Xavier* v. *K. Kathamuthu Konar* [1958] M.L.J. 286.

(4) *Kartar Singh* v. *Mahinder Singh* [1959] M.L.J. 248.